

Circuit Court for Baltimore City
Juvenile Petition No. 618201003

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3339

September Term, 2018

IN RE: A.C.

Kehoe,
Gould,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: January 13, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A.C., appellant, was charged in a fourteen-count juvenile petition, filed in the Circuit Court for Baltimore City, sitting as the juvenile court, with attempted armed carjacking and various related offenses. An adjudicatory hearing was held before a magistrate, who found that, because the victim’s positive identification of A.C. as her assailant was not corroborated by other evidence, the State had failed to prove beyond a reasonable doubt that A.C. was involved in the delinquent acts with which he had been charged. The magistrate recommended a finding of facts not sustained as to all counts.

The State filed exceptions to the magistrate’s findings and recommendations, which the juvenile court sustained, in part. A.C. appealed, presenting the following question for our review:

Should the State’s exception to the magistrate’s finding of insufficient evidence to sustain the charges have been sustained, on the record, where the reliability of the identification was an issue for the magistrate, as the trier of fact?

For the following reasons, we shall affirm the judgments of the juvenile court.

BACKGROUND

At the adjudicatory hearing, the female victim testified that, on June 4, 2018, she was getting out of her car when a “young kid” approached her and asked for her keys. The victim paused and said “what,” because she thought the assailant was kidding, at which point the assailant lifted up his sweatshirt, pulled out a hammer, and said, “bitch, give me your fucking keys.” The victim said, “no, I’m not giving you my keys,” and the assailant responded, “don’t think I won’t fucking hit you, bitch.” The victim “continued to stare” at the assailant’s face and told him that “if he wanted to hit [her] he could hit [her].” She

repeatedly refused the assailant’s demands for her keys, speaking “louder and louder” so that her neighbors could hear her. She explained that she focused on the assailant’s face so that she would be able to identify him if he took her car or assaulted her with the hammer. Eventually, a neighbor came out of his house and chased the assailant away.

The victim called 911 immediately and gave a description of the assailant. About a month later, she identified A.C. in a double-blind photographic array.¹ She explained that, “the minute [she] saw [A.C.’s] picture [her] heart started racing, [her] stomach dropped to the bottom and [she] just felt queasy[,]” which were the “same feelings” she experienced at the time of the attempted carjacking. She had no doubt that the person in that picture was the person who threatened her with a hammer and tried to take her vehicle. After making her identification, she was informed by Detective Scott Harker, the lead detective in charge of the investigation, that the person she identified was “a person that he believed would [] be involved in [her] case.” At the adjudicatory hearing, the victim again identified A.C. as the assailant.

Ruling from the bench, the magistrate found that, in the absence of corroborating evidence, the victim’s identification of A.C. was insufficient to establish criminal agency, stating:

[T]o some extent there’s a certain overlap between this case involving [A.C.] and the headlines that are occurring as we speak. [The victim] I think very vividly said that when she was looking at the photo array she was a little bit nervous about it. When she looked at [A.C.’s] photo in the array, . . . she

¹ A.C. filed a pre-trial motion to suppress the identification on grounds that it was impermissibly suggestive because not all six individuals depicted in the array had similar physical attributes. The magistrate denied the motion. A.C. does not challenge that ruling on appeal.

said she experienced the anxiety welling back up that she had experienced when this incident was alleged to have occurred.

Not entirely unlike what has been going on in the Senate Judiciary Committee regarding the hearings for the appointment of a judge on the Supreme Court, the problem that this court has with this case is that there is no corroboration of [the victim's] identification.^[2] It's not that I don't believe her. Quite frankly, I think that her - - the fact that that anxiety welled up in her when she saw [A.C.'s] picture is a strong indication that [A.C.] was the person, but there is no corroboration to it.

In the absence of any corroboration from anybody other than [the victim] who did identify the picture and did identify [A.C.] here in court today, this court is just not persuaded beyond a reasonable doubt that [A.C.] is the person. Even though I'm thoroughly convinced that [the victim] believes that [A.C.] is the person. But the issue is not her certainty. The issue is this court's certainty. And in the absence of anything else that ties [A.C.] to this case, the court is going to find in this case that the facts are not sustained . . . because of the absence of any corroboration.

In the written findings of fact and recommendations, the magistrate stated:

The only evidence that linked [A.C.] to this attempted robbery was his identification by [the victim], through the photo array and in court. This court finds that the [victim] had a good opportunity to observe her assailant at the time of the incident. A month after the incident, police applied textbook protocol in assembling and presenting the photo array. There was no equivocation in the [victim's] identification, either at the photo array or in court, and her emotional response to viewing [A.C.'s] photo when viewing the array suggests a high degree of confidence in her own identification. Nonetheless, because of an absence of any corroboration of her identification, this court is not convinced beyond a reasonable doubt of [A.C.'s] involvement.

In making that ruling, this court does not suggest that, as a matter of law, an uncorroborated eyewitness identification cannot support a finding of

² We assume that, when the magistrate made these comments from the bench at the conclusion of the adjudicatory hearing on October 1, 2018, he was referring to the testimony of Dr. Christine Blasey Ford, on September 27, 2018, at the Senate Judiciary Committee hearings for the nomination of now-Justice Brett Kavanaugh to the United States Supreme Court.

involvement beyond a reasonable doubt. This court is troubled, however, by examples of strongly-held but incorrect eyewitness identification such as found in the Kirk Bloodsworth case.

The written findings and recommendations cited a July 2000 Baltimore Sun article about Kirk Bloodsworth, who was convicted and sentenced to death for murder, and then released from prison nine years later, after DNA testing exonerated him. The magistrate's report also cited articles questioning the reliability of eyewitness identification. As stated above, the magistrate recommended a finding of facts not sustained. The State filed exceptions and a hearing was held before the juvenile court.

The juvenile court expressed that the magistrate's credibility determination was "inconsistent," and that the court faced a "quandary" in resolving the magistrate's comments regarding the strength of the victim's identification of A.C. with the finding that the State had not met its burden of proving criminal agency. As the juvenile court commented in its order sustaining the State's exceptions, the magistrate "pointed to no evidence or manner of testifying that caused him to doubt the accuracy of the Victim's identification." Rather, the juvenile court noted, "[t]he unequivocal concern for the Magistrate was the lack of corroboration in this incident." Accordingly, the juvenile court felt compelled to review the recorded proceedings and make its own credibility determination.

After reviewing the recording of the proceedings, the juvenile court disagreed with the magistrate's conclusion that, without corroboration, the State had failed to prove criminal agency, stating:

[T]his Court found the Victim to be extraordinarily focused, clear, and forthright. . . . The Victim made it her mission to be able to identify the person who attempted to take her possessions and/or injure[] her with the hammer. Further, the Victim testified that she was not interested in looking at additional photographic arrays once she identified the person who accosted her.

After careful review of this case, the Court agrees with the Magistrate’s first-level determination that the Victim was credible. However, the Court disagrees with the Magistrate’s finding that corroboration was necessary to support the testimony of the Victim in this case.

The juvenile court sustained the State’s exceptions to the findings and recommendations, in part, finding that the evidence adduced at the adjudicatory hearing was sufficient to find A.C. involved on all charges except for those involving conspiracy. This appeal followed.

DISCUSSION

A.C. contends that the juvenile court erred in sustaining the State’s exceptions to the magistrate’s findings and recommendations because “[t]here was undisputed testimony establishing reasons to be skeptical of the identification” of him as the assailant.³ A.C. claims that “due deference to the Magistrate’s role as first-level fact-finder required that

³ Specifically, A.C. asserts that (1) the victim was told that “a photograph of a person whom the police suspected” was included in the array; (2) after identifying A.C. in the photo array, Detective Harker told the victim that she had chosen a person whom he believed to be involved, (3) the victim did not state “whether or not she ever had a chance to look directly at the offender’s face, when it was not, at least, partly obscured by the hood, and if so, for how long”; (4) the identification took place thirty-two days after the incident, and (5) the in-court identification took place nearly four months after the incident. But, as the juvenile court noted, the magistrate did not point to any of those factors in finding that the State had not met its burden of persuasion.

the juvenile court [] not grant the State’s exception on a matter of the credibility and reliability of the identification.”

The State asserts that the juvenile court was not bound to defer to the magistrate’s recommended finding that the victim’s uncorroborated identification of A.C. was insufficient to satisfy the State’s burden of persuasion, because that finding was influenced by facts not in evidence. We conclude that the juvenile court was not bound to defer to the magistrate’s finding as to the ultimate persuasiveness of the evidence in the absence of a first-level negative credibility finding or an impermissibly suggestive identification finding. Accordingly, we shall affirm the judgment of the circuit court.

Pursuant to Maryland Rule 11-111, a magistrate may generally hear any juvenile cases and matters assigned by the circuit court. Md. Rule 11-111(a)(2). The role of the magistrate is to conduct a hearing, then forward to the judge a “written report of [] proposed findings of fact, conclusions of law, recommendations and proposed orders with respect to adjudication and disposition.” Md. Rule 11-111(b).

“The [magistrate’s] primary responsibility is to develop the first-level facts.” *Levitt v. Levitt*, 79 Md. App. 394, 399 (1989). “First-level facts are those that answer the What?, Where? and How? questions.” *Id.* at 398. “After establishing the factual record, the [magistrate] may then draw conclusions from the first-level facts and use these conclusions to make recommendations, which the [trial court] is free to disregard.” *Id.* at 399. As we have explained, “[w]hile the circuit court may be ‘guided’ by the [magistrate’s] recommendation, the court must make its own independent decision as to the ultimate disposition, . . . which the appellate court reviews for abuse of discretion.” *McAllister v.*

McAllister, 218 Md. App. 386, 407 (2014) (citations omitted). “An abuse of discretion exists where ‘no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles.’” *Otto v. State*, 459 Md. 423, 446 (2018) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

“When reviewing a [magistrate’s] report, both a trial court and an appellate court defer to the [magistrate’s] first-level findings (regarding credibility and the like) unless they are clearly erroneous.” *McAllister*, 218 Md. App. at 407. “A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Kusi v. State*, 438 Md. 362, 383 (2014) (citation omitted).

Here, the juvenile court was puzzled by the magistrate’s finding that there was insufficient evidence to prove criminal agency because the magistrate’s oral and written opinions “strongly indicated” that he found the victim to be credible and the magistrate did not point to anything in the record that called the victim’s identification into question, other than the absence of corroboration. Indeed, the magistrate found that the victim had a “good opportunity to observe her assailant,” that she identified A.C. without equivocation, and that her emotional response to viewing A.C.’s photo in the array was “a strong indication” that A.C. was the assailant.

The magistrate recognized that, “as a matter of law,” the testimony of a victim needs no corroboration and, if believed, is legally sufficient to convict, but, “troubled” by “examples of strongly-held but incorrect witness identifications,” stated that corroboration was necessary for him to be convinced, beyond a reasonable doubt, that A.C. was the

assailant. Under these circumstances, it was well within the discretion of the juvenile court to review the video-recorded proceedings and make its own assessment of the weight to be given to the victim's identification.

After conducting an independent review of the recorded proceedings and applying the law of this State to the first-level facts as found by the magistrate, the juvenile court expressed its belief that the victim's identification was sufficient to prove criminal agency and that no corroboration was necessary. The juvenile court did not abuse its discretion when it sustained the State's exception.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**